

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN CHARLES WAILES,  
Plaintiff,

v.

FRANK BISIGNANO, Commissioner of  
Social Security,  
Defendant.

Case No. 2:24-cv-0836-JDP (SS)

ORDER

Plaintiff's counsel seeks an award of attorney fees under 42 U.S.C. § 406(b).<sup>1</sup> ECF No. 18. Plaintiff entered into a contingent fee agreement providing that he would pay counsel twenty-five percent of any award of past-due benefits. ECF No. 18-1 at 1. After this court remanded for further proceedings, plaintiff was found disabled and awarded \$99,104 in past-due benefits. ECF No. 18-3 at 3. Plaintiff's counsel requests \$24,776 in attorney fees, which is equivalent to the statutory maximum, and which equates to an effective hourly rate of \$1,192.82. ECF No. 18 at 15.

An attorney is entitled to reasonable fees for successfully representing social security claimants in district court.

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<sup>1</sup> Although the motion for fees was filed under plaintiff's name, plaintiff's counsel is the real party in interest. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 798 n.6 (2002).

1 Whenever a court renders a judgment favorable to a claimant under  
2 this subchapter who was represented before the court by an  
3 attorney, the court may determine and allow as part of its judgment  
4 a reasonable fee for such representation, not in excess of 25 percent  
of the total of the past-due benefits to which the claimant is entitled  
by reason of such judgment.

5 42 U.S.C. § 406(b)(1)(A). Rather than being paid by the government, fees under section 406(b)  
6 are paid by the claimant from the awarded past-due benefits. *Crawford v. Astrue*, 586 F.3d 1142,  
7 1147 (9th Cir. 2009) (en banc) (citing *Gisbrecht*, 535 U.S. at 802). The twenty-five percent  
8 statutory maximum fee is not an automatic entitlement; the court must ensure that the requested  
9 fee is reasonable. *Gisbrecht*, 535 U.S. at 808-09 (“We hold that § 406(b) does not displace  
10 contingent-fee agreements within the statutory ceiling; instead, § 406(b) instructs courts to review  
11 for reasonableness fees yielded by those agreements.”). In assessing whether a fee is reasonable,  
12 the court should consider “the character of the representation and the results the representative  
13 achieved.” *Id.* at 808. A “court may properly reduce the fee for substandard performance, delay,  
14 or benefits that are not in proportion to the time spent on the case.” *Crawford*, 586 F.3d at 1151.

15 The court finds that the requested fees are reasonable. Counsel’s billing records reflect a  
16 total of 20.77 hours of attorney time on this case. ECF No. 18-4 at 1-2. Counsel’s request for  
17 \$24,776, which is equivalent to the statutory maximum, would constitute an hourly rate of  
18 approximately \$1,192.82 for attorney services. Counsel did not engage in dilatory conduct or  
19 perform in a substandard manner. Indeed, counsel’s representation resulted in this matter being  
20 remanded for further proceedings, which resulted in a favorable decision and an award of  
21 benefits. *See* ECF Nos. 14 & 18-3. Given counsel’s experience, the result obtained in this case,  
22 and the risk of loss in representing plaintiff, the court finds the hourly rate reasonable. *See, e.g.,*  
23 *De Vivo v. Berryhill*, 2018 WL 4262007 (E.D. Cal. Sept. 6, 2018) (awarding fees at an effective  
24 hourly rate of \$1,116.26); *White v. Berryhill*, No. cv 04-00331-AS, 2017 WL 11634804, at \*3  
25 (C.D. Cal. July 7, 2017) (awarding fees at an effective hourly rate of \$1,612); *Monica H. v.*  
26 *Comm’r, Soc. Sec. Admin.*, No. 3:16-cv-2111-JR (D. Or. Jan. 25, 2021) (awarding fees at an  
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1 effective hourly rate of \$2,000); *Kelly Kay M. v. O'Malley*, No. 22-cv-1969-DDL, 2024 WL  
2 4536462, at \*3 (S.D. Cal. Oct. 21, 2024) (awarding fees at an effective hourly rate of \$1,923.07).

3 Counsel concedes that the \$4,725 award should be offset by the fees previously awarded  
4 under the under the Equal Access to Justice Act ("EAJA"). ECF No. 18 at 15; *see* ECF No. 17.  
5 He also indicates that he will reimburse plaintiff the amount previously awarded under the EAJA.  
6 *See Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (holding that where attorney's fees are  
7 awarded under both EAJA and § 406(b), the attorney must refund the smaller of the two awards  
8 to the plaintiff).

9 Accordingly, it is hereby ORDERED that:

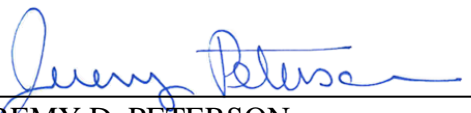
10 1. The motion for attorney fees, ECF No. 18, is GRANTED.

11 2. Plaintiff's counsel is awarded \$24,776 in fees pursuant to 42 U.S.C. § 406(b).

12 3. Upon receipt of the \$24,776 award, counsel shall refund to plaintiff the sum of \$4,725  
13 previously awarded under the EAJA.

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15 IT IS SO ORDERED.

16 Dated: October 14, 2025

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18 JEREMY D. PETERSON  
19 UNITED STATES MAGISTRATE JUDGE  
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